

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY D. HILL

Plaintiff,

vs.

RITA; R.K. BUCKNER HOSTEL;
SHELLY ZIMMERMAN; SAN
DIEGO POLICE CHIEF BURKE;
TROLLEY SECURITY; MTS; SAN
DIEGO; BUS/TROLLY SYSTEM;
CHAIRMAN MATHIS; U.S.A. FBI,

Defendants.

CASE NO. 15cv566-WQH-JLB

ORDER

HAYES, Judge:

The matter before the Court is Plaintiff's Motion to Proceed in Forma Pauperis ("Motion to Proceed IFP"). (ECF No. 2).

On December 9, 2014, Plaintiff initiated this action by filing the Complaint (ECF No. 1), along with the Motion to Proceed IFP (ECF No. 2) and Motion to Appoint Counsel (ECF No. 3).

I. Motion to Proceed IFP

All parties instituting a civil action, suit, or proceeding in a district court of the United States, other than a petition for writ of habeas corpus, must pay a filing fee of \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed despite a party's failure to pay only if the party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177

1 (9th Cir. 1999). “To proceed in forma pauperis is a privilege not a right.” *Smart v.*
 2 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

3 In his affidavit, Plaintiff states that he is unemployed. (ECF No. 2 at 2). Plaintiff
 4 indicates that he receives \$2,906.23 each month from pensions, annuities or life
 5 insurance from the VA. *Id.* Plaintiff indicates that he does not have any checking
 6 accounts and does not have any savings account. *Id.* Plaintiff does not own a home,
 7 vehicle, or any other assets. *Id.* at 3. Plaintiff states that he has debts of \$20,000 in
 8 child support. *Id.* at 3.

9 The Court has reviewed the affidavit and finds that it is not sufficient to show that
 10 Plaintiffs are unable to pay the fees or post securities required to maintain this action.
 11 Plaintiffs’ income and assets are sufficient to pay the \$400 filing fee. The Court denies
 12 the Motion to Proceed IFP pursuant to 28 U.S.C. section 1915(a). Plaintiffs must pay
 13 the filing fee of \$400 to commence this action, or submit further documentation
 14 demonstrating their inability to pay.

15 **II. Initial Screening of Complaint**

16 In the event that Plaintiff is able to demonstrate that IFP is proper, the Court
 17 would conclude that the Complaint should be dismissed for failure to state a claim and
 18 lack of subject matter jurisdiction. A complaint filed by any person proceeding in
 19 forma pauperis pursuant to 28 U.S.C. § 1915(a) is also subject to mandatory review and
 20 sua sponte dismissal to the extent it “is frivolous or malicious; fails to state a claim on
 21 which relief may be granted; or seeks monetary relief from a defendant who is immune
 22 from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *see Lopez v. Smith*, 203 F.3d 1122,
 23 1126 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits but requires a
 24 district court to dismiss an in forma pauperis complaint that fails to state a claim.”). The
 25 standard used to evaluate whether a complaint states a claim is a liberal one, particularly
 26 when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97, 97 (1976).
 27 However, even a “liberal interpretation ... may not supply elements of the claim that
 28 were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268

1 (9th Cir. 1982). “[P]ro se litigants are bound by the rules of procedure.” *Ghazali v.*
 2 *Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Federal Rule of Civil Procedure 8 provides that
 3 “[a] pleading that states a claim for relief must contain ... a short and plain statement of
 4 the claim showing that the pleader is entitled to relief....” Fed. R. Civ. P. 8(a). “[A]
 5 plaintiff’s obligation to provide the grounds of his entitlement to relief requires more
 6 than labels and conclusions, and a formulaic recitation of the elements of a cause of
 7 action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation
 8 omitted).

9 “Dismissal for lack of subject-matter jurisdiction because of the inadequacy of
 10 the federal claim is proper only when the claim is ‘so insubstantial, implausible,
 11 foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as
 12 not to involve a federal controversy.’” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S.
 13 83, 89 (1998) (quoting *Bell v. Hood*, 327 U.S. 678, 682 (2946)). “[T]he district court
 14 has jurisdiction if ‘the right of the petitioners to recover under their complaint will be
 15 sustained if the Constitution and laws of the United States are given one construction
 16 and will be defeated if they are given another,’ unless the claim ‘clearly appears to be
 17 immaterial and made solely for the purpose of obtaining jurisdiction or where such a
 18 claim is wholly insubstantial and frivolous.’” *Id.* (quoting *Bell*, 327 U.S. at 682-83,
 19 685).

20 In this case, Plaintiff indicates that the nature of the suit is civil rights and
 21 identifies Defendants in the caption. However, Plaintiff’s Complaint does not provide
 22 facts from which the Court or the Defendant can identify the claims made against the
 23 Defendant. Plaintiff’s Complaint alleges that:

24 On 3-3-15 while riding on [the] trolley at City College ... I was falsely
 25 accused and held and subject to individuals who attempted to escalate the
 26 situation. Called names and felt discriminated because I’m African
 27 American and have disabilities.... 3-9-15 or so I went to SPD ... when I
 28 kept asking questions the police ask[ed] me [if] I was on medication, I
 calmly replied I’m 100% disabled total and permanent. He told me to
 leave.... R.K. Buckner AKA Rita owner. I had been their [sic] and
 constantly been victim of thefts ... this property has no sprinklers, yet staff
 smokes cigs and weed in [the] building. After complaining to Rita ... I
 was threatened and intimidated by someone claiming to be the MSR. On

3-11-15 she allws underage drinking and smoking employees, says she never takes care of anything, this is because I'm black with disabilities (Retaliation), discrimination in Housing, failure to oversee property.... R.K. is looking at video and maybe altering or possibly deleting this and all action resulting in being African American with disabilities: intentional infliction of severe emotional distress[,] punitive damages[,] general damages[,] nominal damages. I contacted the FBI ... I told [the agent] that in 2002 in Munice, IN, Delaware County a federal police liked and was caught lying when ... Memorial Hospital Security [,] William Kirby informed me and [the] nurse ... that I said that when I get out I'm going to blow the (local, Munice) SSA office up.... I told the FBI I feared for my life [and] they hung up. All because I'm black with disabilities.

(ECF No. 1 at 1-3).

Plaintiff's Complaint does not allege a basis for this Court's subject matter jurisdiction. *See Watson v. Chessman*, 362 F. Supp. 2d 1190, 1194 (S.D. Cal. 2005) ("The court will not . . . infer allegations supporting federal jurisdiction; federal subject matter [jurisdiction] must always be affirmatively alleged."). Because the complaint neither states a claim under which relief may be granted, nor invokes the Court's jurisdiction, it would be subject to sua sponte dismissal pursuant 28 U.S.C. § 1915(e)(2)(B)(ii).

IV. Conclusion

IT IS HEREBY ORDERED that the Motion to Proceed IFP (ECF No. 2) is DENIED. Defendant shall, within sixty (60) days of the date this Order is filed, either (1) pay the requisite \$400.00 filing fee, or (2) submit a more detailed motion to proceed in forma pauperis. If Defendant fails to submit payment or a more detailed motion to proceed in forma pauperis within sixty days of the date of this Order, the Court will dismiss Plaintiff's Complaint without prejudice.

DATED: March 23, 2015


WILLIAM Q. HAYES
 United States District Judge